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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/169626

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 23, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Calumet County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on January 7, 2016, at Chilton, Wisconsin.

This hearing was originally scheduled for December 10, 2015. However, the Petitioner requested an adjournment because he needed additional time to prepare for the hearing. The matter was subsequently scheduled for hearing on January 7, 2016.

The issue for determination is whether the Calumet County Department of Health Services (the agency) correctly determined the Petitioner's FoodShare allotment from August 2015 going forward.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Mitch Birkey, Economic Support Manager  
Calumet County Department of Human Services  
206 Court Street  
Chilton, WI 53014-1198

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Calumet County.

2. On December 8, 2015, the agency sent the Petitioner a notice indicating that effective January 1, 2015, he would be receiving \$320.00 per month in FoodShare benefits. (Exhibit 4)
3. On July 17, 2015, the agency sent the Petitioner a notice indicating that his FoodShare benefits would be ending effective August 1, 2015, because he had not completed a renewal. (Exhibit 5)
4. On July 31, 2015, the agency sent the Petitioner a notice indicating that as of August 1, 2015, he would be receiving \$16.00 per month in FoodShare benefits. (Exhibit 2)
5. On August 13, 2015, the agency sent the Petitioner a notice indicating that as of September 1, 2015, he would be receiving \$16 per month in FoodShare benefits. (Exhibit 6)
6. On September 21, 2015, the agency sent the Petitioner a notice, advising him that as of October 1, 2015, his FoodShare benefits would go up from \$16.00 per month to \$187.00 per month. (Exhibit 7)
7. On October 5, 2015, the agency sent the Petitioner a notice, indicating that his FoodShare benefits would be reduced to \$16.00, effective November 1, 2015. (Exhibit 8)
8. The Petitioner filed a request for Fair Hearing that was received by the Division of Hearings and Appeals on October 23, 2015. (Exhibit 1)
9. Petitioner receives \$1,313.00 per month in Social Security Disability Income and his son receives \$708.00 per month in Social Security Surviving Child Benefits. (Testimony of Petitioner; Exhibit 10)
10. Petitioner owns a side-by-side duplex. He lives in one of the units and rents out the other. He receives \$660 per month from the unit he rents out. (Testimony of Petitioner; 2014 Schedule E – Exhibit 2)
11. In 2014, the Petitioner paid \$11,218.63 in principal, \$2174.75 in mortgage interest, and \$697.00 in homeowner's insurance. This was all contained in Petitioner's mortgage payment which works out as follows:  

$$\$11,218.63 + \$2174.75 + \$697.00 = \$14090.38 \text{ Total paid in 2014}$$

$$\$14,090.38 \div 12 \text{ months} = \$1174.20 \text{ monthly mortgage payment}$$
 (Testimony of Petitioner; 2014 1099, and Premium Notice – Exhibit 2)
12. Petitioner incurred \$837 in dental expenses. He has recurring expenses of \$24.06 in "out of pocket medical/remedial expenses" and \$12.04 in "medical expenses not covered by MA". (Exhibit 12; Testimony of Petitioner)
13. Petitioner has a household size of 2.

## **DISCUSSION**

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has a member over age 60. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FoodShare Wisconsin Handbook (FSH), § 4.3.1.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.*

### *Petitioner's Income*

Petitioner did not dispute the amounts his household receives in various Social Security benefits. Petitioner did have some concerns regarding the agency's calculation of his rental income.

The provisions governing the calculation of rental income are found in FSH §§4.3.3.4 and 4.3.4.2 ¶23. Rental income is considered earned income, when the individual actively manages the property for 20 or more hours per week; it is considered unearned income when the individual manages the property for less than 20 hours per week. Id.

At the hearing, the agency indicated that it considered Petitioner's rental income to be unearned income which means he would not get an earned income deduction. It is unclear from the record how the agency determined that the Petitioner managed the property for less than 20 hours per week. However, the Petitioner did not dispute this determination at the hearing.

In any event, it does not really matter, because as will be explained further, below, the property did not generate any income for the Petitioner.

- a. When the owner is not an occupant, "net rent" is the total rent payment(s) received minus the total mortgage payment (principal and interest) and other verified operational costs such as (but not limited to) hazard insurance, mortgage insurance and taxes.
- b. When income is received from a multi-unit property and the owner lives in one of the units, compute "net rent" as follows:**
  - i. Add the total mortgage payment (principal and interest) and other verified operational costs such as (but not limited to) hazard insurance, mortgage insurance and taxes common to the entire operation.
  - ii. Multiply the number of rental units by the total in step (i).
  - iii. Divide the result in (ii) by the total number of units, to get the proportionate share.
  - iv. Add the proportionate share to any operating costs paid that are unique to the rental unit. This equals total expenses.
  - v. Subtract total expenses from total rent payments to get net rent

FSH §§4.3.3.4 and 4.3.4.2 ¶23

It does not appear that the agency applied these provisions when determining Petitioner's income from the rental properties.

Applying FSH §4.3.3.4 / 4.3.4.2 ¶23 to Petitioner we have the following:

- (i) - As discussed in Finding of Fact paragraph 11, the Petitioner's monthly mortgage payment is \$1174.20, which includes mortgage, insurance and property taxes for both units.
- (ii) And (iii) - There are two units. Thus, the proportionate share of mortgage expenses for the rental unit is \$587.10 (half of \$1174.20).
- (iv) - According to the 2014 Schedule E, other annual costs attributed only to the rental unit are as follows:
  1. Auto / Travel : \$177
  2. Cleaning and Maintenance: \$733
  3. Legal/Professional Fees: \$39
  4. Repairs: \$1,960
  5. Supplies: \$782

(See Exhibit 2)

The monthly costs work out to be as follows:

\$177  
\$733  
\$39  
\$1,960  
\$782

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\$3691 total annual costs

$\$3691 \div 12 \text{ months} = \$307.58$  additional monthly costs

- (v) - Petitioner's total monthly costs for the rental unit are \$587.10 for mortgage + \$307.58 for other costs = \$894.68.

Petitioner receives \$660 per month in rent.

$\$660 \text{ rent} - \$894.68 \text{ monthly expenses} = \$0$  income from the rental unit.

Thus, Petitioner's total household income is:

\$1,313.00 per month in Social Security Disability Income  
+ \$708.00 per month in son's Social Security Survivor's Benefits  

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\$2021 per month

Petitioner is categorically eligible for FoodShare benefits because he is below the 200% FPL Income limit of \$2656 for a household of two people. *See* FSH §4.2.1.1 and §8.1.1.1

#### *Deductions for Calculating Allotments*

Once a household passes the gross income test certain limited deductions are applied in determining the FoodShare allotment: a standard deduction, an earned income deduction, a deduction for dependent care expenses, an excess shelter deduction, and for elderly, blind and disabled individuals, an excess medical expense deduction. (*FSH, at § 4.6*)

The term 'disabled' is a term with a definition as to the FoodShare program:

#### **3.8.1.1 EBD Introduction**

An elderly individual is a food unit member age 60 or older.

A disabled individual is a food unit member who receives disability or blindness benefits from any of these programs: [SSA](#), [MA](#), [SSI](#) or SSI related MA, Railroad Retirement Board ([RRB](#)).  
*FSH, §3.8.1.1.*

#### **I. Petitioner's Deductions For August and September 2015:**

- (1) a standard deduction –

This \$155 per month for a household of 1-3 people. 7 CFR § 273.9(d)(1):

- (2) an earned income deduction - which equals 20% of the household's total earned income, 7 CFR § 273.9(d)(2);

Petitioner had not earned income, so this did not apply to Petitioner in August and September 2015.

- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, 7 CFR § 273.9(d)(3);

Since Petitioner receives SSDI, he may deduct his out of pocket medical expenses that exceed \$35.

However, it does not appear that the Petitioner reported/verified any medical expenses until September 2015, thus he would not get the deduction until October 2015.

- (4) dependent care deduction for child care expenses, 7 CFR § 273.9(d)(4); and

Petitioner did not report any child care expenses.

- (5) shelter and utility expenses deduction which are equal to the excess expense above 50% of net income remaining after other deductions. 7 CFR § 273.9(d)(5).

Per FSH §4.6.7.2, “When a self-employed person claims the total shelter costs as a business expenses, do not allow any shelter deduction. **If a s/he [sic] claims a percentage of the shelter costs as a business expense, the remaining percentage is a shelter deduction.**” Thus, Petitioner is allowed to count ½ of the total mortgage as an expense, which is \$587.10

The standard utility allowances were as follows:

HSUA – Heating Standard Utility Allowance	\$446
LUA – Limited Utility Allowance	\$321
EUA – Electric Utility Allowance	\$161
WUA-Water and Sewer Utility Allowance	\$74
FUA- Cooking Fuel Allowance	\$37
PUA- Phone Utility Allowance	\$30
TUA – Garbage and Trash Utility Allowance	\$19

There is a cap of \$490.00 on the shelter cost deduction, *unless* a household has an elderly, blind or disabled member.

It is undisputed that Petitioner was entitled to the full HSUA of \$446.

## II. For October 2015 going forward:

The amounts allowed for certain deductions changed effective September 28, 2015.  
<http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>

- (1) a standard deduction –

This \$155 per month for a household of 1-3 people. 7 CFR § 273.9(d)(1):

- (2) an earned income deduction - which equals 20% of the household's total earned income, 7 CFR § 273.9(d)(2);

Petitioner had no earned income so, this does not apply to him.

- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, 7 CFR § 273.9(d)(3);

Since Petitioner receives SSDI, he may deduct medical expenses that exceed \$35.

It is undisputed that in September 2015, Petitioner reported recurring expenses of \$24.06 in “out of pocket medical/remedial expenses” and \$12.04 in “medical expenses not covered by MA”.

According to the agency, Petitioner also reported a dental expense of \$837, which the agency allowed as a one-time expense in the October 2015 budget, since Petitioner first reported/verified the expense in September 2015. (See Exhibit 7)

It should be noted that one time medical expenses may be budgeted for one month or averaged over the remaining certification period. FSH §4.6.4.1 Since Petitioner’s renewal was for a certification period beginning in August, after Petitioner reported the expense, there were 10 months left in the certification period (October through July), so if one averaged out the dental expense, it would have been \$83.70 per month.

If using an averaged amount, Petitioner’s excess medical expense would be:

\$83.70
+\$24.06
+\$12.04
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Total out of pocket medical expenses: \$119.80
\$119.80
-\$35.00
<hr/>
\$84.80 excess medical expense

However, the \$84.40 deduction would not have increased Petitioner’s allotment, which is why the agency correctly chose to allow the dental expense as a one-time deduction for October 2015, that way Petitioner would have an increase in benefits for at least October 2015.

October’s excess medical expense was then:

\$837.00
+\$24.06
+\$12.04
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\$873.10 Total Expenses for October

\$873.10  
-\$35.00

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\$838.10 excess medical expenses for October

The excess medical expense for November going forward was:

\$24.06  
+\$12.04  
-\$35.00

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\$1.10

(4) dependent care deduction for child care expenses, 7 *CFR* § 273.9(d)(4); and

Petitioner claimed no dependent care expenses

(5) shelter and utility expenses deduction the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 *CFR* § 273.9(d)(5).

Per *FSH* §4.6.7.2, "When a self-employed person claims the total shelter costs as a business expenses, do not allow any shelter deduction. If a s/he [sic] claims a percentage of the shelter costs as a business expense, the remaining percentage is a shelter deduction." Thus, Petitioner is allowed to count ½ of the total mortgage as an expense, which is \$587.10

The standard utility allowances are as follows:

HSUA – Heating Standard Utility Allowance	\$458
LUA – Limited Utility Allowance	\$293
EUA – Electric Utility Allowance	\$119
WUA-Water and Sewer Utility Allowance	\$78
FUA- Cooking Fuel Allowance	\$46
PUA- Phone Utility Allowance	\$30
TUA – Garbage and Trash Utility Allowance	\$20

There was a cap of \$504.00 on the shelter cost deduction, *unless* a household has an elderly, blind or disabled member.

It is undisputed that Petitioner is entitled to the full HSUA of \$458.

*FSH*, §§ 4.6.7.1 and 8.1.3.

*Petitioner's Allotment for August and September 2015*

Gross Income	\$2021.00	Mortgage	\$587.10
No Earned Income Deduction		HSUA	\$446.00
Standard Deduction	-\$155.00	50% Net income	-\$933.00
No Medical Expenses exceeding \$35		before shelter expense	
No Dependent Care Expenses			
		Excess Shelter Expense	\$100.10

Net Income Before Shelter Expense (BSE)	\$1866.00
Excess Shelter Expense	- 100.10
Net Income	\$1765.90

Individuals, in a household of two, with a net income of \$1765.90 qualify for a FoodShare allotment of \$16.00 per month. *FSH §8.1.2* Thus, the agency correctly calculated Petitioner's allotment for August and September 2015.

*Petitioner's Allotment for October 2015*

Gross Income	\$2021.00	Mortgage	\$587.10
No Earned Income Deduction		HSUA	\$458.00
Standard Deduction	-\$155.00	50% Net income	-\$513.95
Medical Expenses exceeding \$35	-\$838.10	before shelter expense	
No Dependent Care Expenses		Excess Shelter Expense	\$531.15
Net Income Before Shelter Expense (BSE)	\$1027.90		
Excess Shelter Expense	- \$531.15		
Net Income	\$496.75		

Individuals, in a household of two, with a net income of \$496.75, rounded to \$497, qualify for a FoodShare allotment of \$207.00 per month. *FSH §8.1.2*

The agency determined the Petitioner's allotment to be \$187.00 for October, so its calculation was a little short.

*Petitioner's Allotment for November 2015 forward*

Gross Income	\$2021.00	Mortgage	\$587.10
No Earned Income Deduction		HSUA	\$458.00
Standard Deduction	-\$155.00	50% Net income	-\$932.45
Medical Expenses exceeding \$35	-\$1.10	before shelter expense	
No Dependent Care Expenses		Excess Shelter Expense	\$112.65
Net Income Before Shelter Expense (BSE)	\$1864.90		
Excess Shelter Expense	- \$112.65		
Net Income	\$1752.25		

Individuals, in a household of two, with a net income of \$1752.25 qualify for a FoodShare allotment of \$16.00 per month. *FSH §8.1.2* Thus, the agency correctly calculated Petitioner's allotment for November 2015 going forward.

At the hearing the Petitioner indicated that he had some changes in circumstances. If that is the case, he will need to report and verify those changes to have his benefits adjusted for future months.



### CONCLUSIONS OF LAW

The agency correctly calculated the Petitioner's FoodShare allotment for August 2015, September 2015 and November 2015 going forward.

The agency did not correctly calculate the Petitioner's Foodshare allotment for October 2015.

**THEREFORE, it is**

### ORDERED

That the agency issue to the Petitioner, a total of \$207 in FoodShare benefits for October 2015. The agency shall take all administrative steps to complete this task within 10 days of this decision.

In all other respects, the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

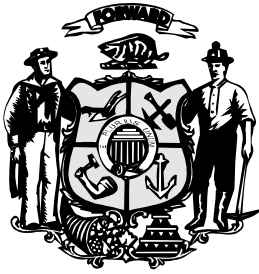
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 11th day of January, 2016

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 11, 2016.

Calumet County Department of Human Services  
Division of Health Care Access and Accountability